



Department of Justice

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ADDRESS

BY

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE ANNUAL DINNER MEETING
OF
THE CHICAGO BAR ASSOCIATION

6:30 P.M.
THURSDAY, JUNE 24, 1976
RED LACQUER ROOM
THE PALMER HOUSE
CHICAGO, ILLINOIS

I am delighted to be here to participate in the installation of Kenneth Prince as President of the Chicago Bar Association. This is an important occasion for the legal profession, an occasion that recognizes this significant office and the man who is to assume it. I am very proud of this Association, which I regard as my association, and which includes so many lawyers with whom I have worked in many ways throughout the years. Kenneth Prince is fully worthy of his distinguished predecessors, and they have been outstanding--which is the mark of an association which has lived up to its responsibilities. My pleasure is enhanced, although I cannot play favorites among law schools and universities, that Kenneth was a near-classmate of mine both at the college of the University of Chicago and in its law school. He graduated one year behind me in the college and one year ahead of me in the law school, which I admit says something about his alacrity and brightness. But these are qualities well known to you.

Since I assume I have been invited to speak at this solemn occasion because I am temporarily in exile in a far off place, I thought it would not be amiss if I began by describing one of the amusing folkways I have encountered.

It occurred just last week as I began to prepare for a formal press conference.

Two days before I was scheduled to talk with the press, I received what is known in Washington as a "briefing book." This briefing book, prepared by the public information staff at the Department, in consultation with the various divisions, U.S. Attorneys and bureaus, includes questions that might be asked with some proposed answers. In these days the briefing book is by no means brief. One peculiar thing is that the hardest questions often have no proposed answers. I suppose this is based on the theory that peril is a stimulant to wit.

In some ways the briefing book is a necessity, and it is a most valuable tool for the head of an agency. The Department of Justice is not a large department, as cabinet departments go, but it has about 52,000 employees. And while the Department has many aspects which go beyond those which might be expected in a large law office, the Department has enormous litigating, law advice giving and related duties, which would qualify a part of the Department as a rather large, although segmented, law firm. The Department has about 3600 lawyers, functioning as lawyers, handling a caseload of about 76,000 cases, of which more than one third are criminal. As I have indicated, a great deal of the work

of the Department goes beyond these matters. The law office aspect itself suggests the difficulty and importance of keeping informed so that one can achieve, when necessary, a unified approach. We use many methods to try to achieve this. In my own view, a too segmented Department of Justice is undesirable; one has to achieve a balance between centralization and delegation--a balance in which the exchange of information is pivotal. But all that is the subject of another talk. Suffice it to say that the briefing books, of which I have had many, are themselves valuable tools for keeping informed. As the Attorney General moves around the country, or even when he is in Washington, he is supposed to know or be able to say something--or look as though he could say something even if he says "no comment"--on every case, investigation or other matter in which the Department may be involved and as to which there is some curiosity. This convention of total knowledge is bothersome. But the briefing book is a legitimate help. The briefing book, however, goes beyond such questions.

Before an important press conference, the briefing book in the Department of Justice is supplemented with a session in which one goes over the questions and supposed answers with members of the Department's public information office. This session is, I suppose, a perquisite of office.

I must admit that it has rather astonished me, This is one aspect of Department of Justice life which, before returning to the Department a year and half ago, I would never have imagined would greet me.

So let me take you to this session which occurred last week. I apologize that this recounting inevitably involves an apparent preoccupation with myself. I like to think it would have happened to anyone. I just happened to be there. The book did not begin gently.

"Question: A recent article about you in one of your hometown newspapers suggested you regard the press as a rabble, unable to comprehend complex matters. Is this really your view?"

I remembered having been advised that the jocular style of the press has a glorious tradition, and that it has been best described in a Chicago setting by Ben Hecht and Charles MacArthur. I knew that it was not the better part of wisdom to make light of heritage. Of course when the revival of the play, The Front Page, opened in Washington this year, the Post piously observed that this play's bawdiness characterized a press era well past and an image of newsmen that had been eradicated by noble victories of reporting. Even so, I figured that as an outsider to the media I would only get into trouble commenting on style and tradition. Instead I mumbled weakly, as I was told this attack would be made upon me, that I might answer, "Some of my best friends are newsmen." "That answer won't do at all," I was told.

Then I moved on to the second question: "Columnists Evans and Novak recently described your performance with respect to the Boston Busing case as 'hopelessly amateurish.' Notwithstanding the fact," the question went on, "that those who are aware of the background of this matter know differently, do you believe that unnamed White House aides are deprecating you in talks with reporters?" I suggested I might say that the busing decision perhaps seemed bad because it was not politically shrewd--indeed was not political--and in that sense was hopelessly amateurish. I was inwardly a little relieved by the kind suggestion of the Department employee who wrote the question that "those who are aware of the background of this matter know differently," but then I looked at the third question, and realized that he might have a reason other than just kindness for saying so.

The third question: "One characterization of you that has appeared in the press with some frequency is that you are thin-skinned and take strong umbrage to criticism. Is this a fair assessment?"

Frankly, that irritated me.

All of my attempts to answer this question before my colleagues failed as being hopelessly defensive, offensive, or too light hearted.

At this point, I was presented with a fourth question, concocted too late for inclusion in the book, but presented on an emergency basis.

The fourth question: "Various commentators in the press have characterized you as indecisive, vacillating and ineffective. Do you feel such comments are justified?"

The suggested answer which was given to me began with the statement "No, I don't", and then proceeded to wobble along with a series of equivocating, indecisive, vacillating, ineffective and unpersuasive defenses. Realizing I couldn't use these, and by now feeling totally taunted and done in, I suggested I might answer that various commentators at different times had characterized foreign tyrants as great liberals, knaves as heroes and scholars as fools, and that a little indecision among commentators might have a salutary effect.

My colleagues were divided between those who thought the answer was too flippant and those who considered it insulting.

Next I ventured I might reply that commentators have to say something in order to make a living and that is all right with me. One of my colleagues, playing the role of a newsman with a follow-up question, asked whether my answer didn't indicate the kind of grating arrogance that had been attributed to me. As to any answers to this, I was advised

that I should be apologetic, but not so apologetic that anyone might think I was being thin-skinned. When I ventured a serious response as to how I thought reasoned decisions should be arrived at, the unanimous view was that I should not try anything so complicated and therefore evasive.

Now through all of this I felt what a student of Zen must feel when, asked by his master an unanswerable question, he tries honestly to unriddle it and receives a blow on the head for his efforts. I suppose the genius in this Zen master approach is to thicken the skin by scarring it.

Anyway the press conference came. I was livid with preparation for it. None of the questions was asked. It was all quite amicable. In fact it restored my spirits which had been drenched by the hazing. But I was ready. I was ready.

I suppose that this experience of office holding is a part of the era in which we find ourselves. As a people we have been fortunate enough to have had government abuses of the past 30 years revealed in a short period of time. It is a serious moment in our history, and it is the part of statesmanship to handle these revelations, not with a cycle of reaction, but rather as an experience to be brought within our system of governance, which after all has shown itself to be as strong as we had hoped it was. I think, by the way, that civility and trust have been reestablished during the Ford Administration--an achievement, gained through openness and the willingness to accept the vulnerability that openness always entails.

At the Department of Justice we have tried to draw upon the experience of our recent past to determine where institutional changes are needed. We have also tried to look further back into our history to find the mechanisms that will most effectively accomplish the change. Guidelines now in effect controlling the Federal Bureau of Investigation's domestic security and civil disturbance investigations are a result of this effort. They provide a series of legal standards that must be met before various investigative techniques may be used. They tie domestic security investigations closely to the enforcement of federal criminal statutes. And they set up a detailed process of review of investigations by the Attorney General and other Department officials who are not a part of the FBI. We have undertaken the establishment of guidelines in a spirit of cooperation with Congress, which, I have often said, should undertake legislative efforts to clarify the jurisdiction of the Bureau. I believe it is important to the well-being of the public to be vigilant about the operations of the FBI and also to give it the support it deserves and needs in order to continue as an effective and highly professional investigative agency. This requires a consistency of concern that goes beyond the perceived issues of the moment.

The Department of Justice also drafted and President Ford proposed legislation providing for a special kind of judicial warrant procedure to be used for electronic surveillance to obtain foreign intelligence and foreign counter-intelligence information. Electronic surveillance in this special and extremely important area has never involved a judicial warrant procedure. Suggestions that it could and should have never before been accepted--not for 35 years. The unprecedented legislation proposed by the Administration in this area promises to provide an assurance to the American people that the federal government is not abusing its powers.

There have also been movements in Congress to undertake statutory reforms in reaction to the revelation of past abuses. One recent example is "The Watergate Reform Act," currently being considered by the Senate. It is doubtless a sincere effort to prevent the recurrence of abuses, but it raises serious questions.

The bill would require compendious public financial disclosures by all federal employees who earn more than about \$37,000 a year. I do not know whether this broadside public disclosure requirement will make it difficult for the government to attract from the private sector the high quality people that it needs. You are perhaps the best judges of this. The bill would also create a Congressional Legal Counsel who could, when Congress chooses, intervene or appear as amicus curiae in any litigation in which the United States is a party and in which the constitutionality of a

federal statute is challenged. Among its provisions the bill, as I read it, would also prohibit the Department of Justice from intervening in cases to challenge the constitutionality of federal statutes. The possible effect this would have upon the protection of constitutional rights is, I think, a matter which should be carefully considered.

I must say I am disturbed by the current provision in the bill to create a procedure by which a special prosecutor could be appointed by federal courts when certain allegations are made about a federal official. Tempting as it may be for an Attorney General to rid himself of controversial cases involving officials, I must say that the procedure in the bill is seriously flawed. When an allegation is made concerning a federal official in certain categories, it would be required that a special prosecutor be named unless within 30 days of the receipt of the allegation, the Attorney General certified that the allegation was clearly frivolous and that no further investigation was required. The time limit of 30 days is impractical. A thorough criminal investigation requires much longer. But worse is the certification the Attorney General must make. An Attorney General would be very unlikely to certify that an allegation is clearly frivolous. The consequence of the bill would be the appointment of numerous special prosecutors. I take it that it would remove U.S. Attorneys from any part in these cases. I also take it that an ongoing criminal investigation in which an allegation against certain federal officials is made might be required to be turned over to a special prosecutor to the exclusion

of the U.S. Attorney. I do not know what would be done if the allegation later turned out to be unfounded, but the procedure could result in a clumsy passing of the case back and fourth between the Department of Justice and special prosecutors. Such intricate cases are a reminder of the point that it is difficult to say whether an allegation is "clearly frivolous." Indeed, often the more outrageous the allegation the more it requires a careful and thorough investigation and review to evaluate. In addition the requirement that these allegations be reported publicly in court would result in the wide dissemination of all manner of malicious gossip and unfounded allegations. The provision of the Watergate Reform Act, designed as a reassurance, would have the effect of undermining the confidence of the people in the integrity of their government. Though I know it was not intended to do so, I fear that the bill would politicize justice.

Legal reforms based on our recent experience are certainly required. The Department of Justice has undertaken this effort. But the reforms must be carefully designed lest they create more problems than they solve. It is the duty of the legal profession to seize upon what is good and wise and abiding in the values we hold and the traditions we share as a people and to fashion from them the standards and procedures that will protect and nurture them. This duty is always with us. Organizations such as the Chicago Bar

Association and its new President, Kenneth Prince, play a significant part in meeting it. And the duty is most heavy upon us, I believe, at times such as this when legal reform is both a requirement and a danger, for it is an essential function of the bar to moderate the cycle of reaction and to remind us of the strength of our values.